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P.O. BOX 10500
MCLEAN VA 22102

MAILED

OCT 15 2010

OFFICE OF PETITIONS

In re Application of Hanna et al. :
Application No. 09/853,580 :
Filing Date: May 14, 2001 :
Attorney Docket No. 037003-080618 :

Decision on Petition

This is a decision on the petition filed February 10, 2004, under 37 CFR 1.181 to withdraw the holding of abandonment of the above-identified application. The Office regrets the delay in the issuance of the instant decision.

The petition is **dismissed**.

Any request for reconsideration must be submitted within TWO (2) MONTHS from the mail date of this decision. No further petition fee is required for the request. Extensions of time under 37 CFR 1.136(a) are NOT permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.181."

The Office mailed a non-final Office action on November 27, 2002.

A reply to the November 27, 2002 Office action was filed April 23, 2003.

A Notice of Non-Compliant Amendment was mailed May 1, 2003.

A reply to the May 1, 2003 notice was filed May 13, 2003.

A Notice of Non-Compliant Amendment was mailed June 24, 2003.

The Office did not receive a reply to the June 24, 2003 notice. As a result, the Office deemed the application to have become abandoned on July 25, 2003.

The Office mailed a Notice of Abandonment on January 21, 2004.

The instant petition was filed February 10, 2004.

The petition is accompanied by "a complete listing of [the firm's] docket entries for this matter."

The Manual of Patent Examining Procedure ("MPEP") § 711.03(c)(I)(A) (8th ed. Rev. 8, July 2010) states,

Practitioner must state that the Office action was not received at the correspondence address of record, and that a search of the practitioner's record(s), including any file jacket or the equivalent, and the application contents, indicates that the Office action was not received. A copy of the record(s) used by the practitioner where the non-received Office action would have been entered had it been received is required. A copy of the practitioner's record(s) required to show non-receipt of the Office action should include the master docket for the firm. That is, if a three month period for reply was set in the nonreceived Office action, a copy of the master docket report showing all replies docketed for a date three months from the mail date of the nonreceived Office action must be submitted as documentary proof of nonreceipt of the Office action. If no such master docket exists, the practitioner should so state and provide other evidence such as, but not limited to, the following: the application file jacket; incoming mail log; calendar; reminder system; or the individual docket record for the application in question.

The instant petition does not state a search of the firm's file jacket, or the equivalent, has been performed or state such a search indicates the June 24, 2003 notice was never received.

The instant petition does not include a master docket showing all matters entered with a due date of July 24, 2003, or state such a docket does not exist.

Although this decision includes a quotation of part of a July 10, 2010 revision of the MPEP, the requirements set forth above (search of the file jacket and master docket) are consistent with the revision of the MPEP in place at the time the petition was filed.

MPEP § 711.03(c)(II) (8th ed., Rev. 1, February 2003) stated, with emphasis added,

To minimize costs and burdens to practitioners and the Office, the Office has modified the showing required to establish nonreceipt of an Office action. The showing required to establish nonreceipt of an Office communication *must include a statement* from the practitioner stating that the Office communication was not received by the practitioner and *attesting to the fact that a search of the file jacket* and docket records indicates that the Office communication was not received. A copy of the docket record where the nonreceived Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement. For example, *if a three month period for reply was set in the nonreceived Office action, a copy of the docket report showing all replies docketed for a date three months from the mail date of the nonreceived Office action must be submitted* as documentary proof of nonreceipt of the Office action. See Notice entitled "Withdrawing the Holding of Abandonment When Office Actions Are Not Received," 1156 O.G. 53 (November 16, 1993).

In view of the prior discussion, the petition cannot be granted at this time.

The petition states, "Payment of the requisite fee under 37 C.F.R. 1.17(h) is enclosed." A review of Office records fail to indicate the Office received any fee with the petition. However, since the petition is a petition to withdraw the holding of abandonment, a fee is not necessary.

Further correspondence with respect to this matter may be submitted as follows:

By Internet: A request for reconsideration may be filed electronically using EFS Web.¹
Document Code "PET.OP" should be used if the request is filed electronically.

By mail: Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

By facsimile: (571) 273-8300
Attn: Office of Petitions

By hand: U.S. Patent and Trademark Office
Customer Service Window
Randolph Building
401 Dulany Street
Alexandria, VA 22314

Telephone inquiries regarding this communication should be directed to Petitions Attorney Steven Brantley at (571) 272-3203.



Charles Steven Brantley
Senior Petitions Attorney
Office of Petitions

Attached: Copy of June 24, 2003 Notice of Non-Compliant Amendment

¹ General Information concerning EFS Web can be found at <http://www.uspto.gov/patents/process/file/efs/index.jsp>.



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/853,580	05/14/2001	Nabil Hanna	P 0280618 1997-30-0568A	7150

909 7590 06/24/2003
PILLSBURY WINTHROP, LLP
P.O. BOX 10500
MCLEAN, VA 22102

EXAMINER

NICKOL, GARY B

ART UNIT	PAPER NUMBER
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1642

DATE MAILED: 06/24/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.



UNITED STATES PATENT AND TRADEMARK OFFICE

UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND
DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, DC 20231
www.uspto.gov

Paper No.

Notice of Non-Compliant Amendment (Voluntary Revised Practice)

The amendment filed 5-13-03 under the voluntary revised amendment practice guidelines¹, published in the Official Gazette on February 25, 2003 (*Amendments in a Revised Format Now Permitted*, 1267 Off. Gazette 106), does not fully comply with minimal requirements of the voluntary practice. In order for the amendment to be entered, it must either (1) comply with the guidelines of the voluntary revised amendment practice (which practice invokes waivers of certain 37 CFR 1.121(a)-(d) requirements) or (2) comply with current 37 CFR 1.121 requirements.

THE FOLLOWING ITEM(S) IN APPLICANT'S AMENDMENT CAUSES THE AMENDMENT TO BE NON-COMPLIANT WITH THE VOLUNTARY REVISED AMENDMENT PRACTICE.

- ☒ 1. A complete listing of all of the claims is not present in the amendment paper.
- ☐ 2. The listing of claims does not include the text of all claims currently under examination.
- ☒ 3. The claims of this amendment paper have not been presented in ascending numerical order.
- ☐ 4. Each claim has not been provided with a status identifier, and, as such, the individual status of each claim cannot be determined.
- ☒ 5. Other: Cl 5 23-36 are missing, are the
cls cancelled.

LIE: Check one of the following boxes:

- ☐ **PRELIMINARY AMENDMENT:** Applicant is given ONE MONTH from the mail date of this letter to re-submit the amendment in compliance with either the guidelines of the revised amendment practice or current 37 CFR 1.121. Failure to comply with either the current 37 CFR 1.121 practice or with the voluntary practice will result in non-entry of the amendment and examination on the merits will commence without entry of the originally proposed preliminary amendment. This notice is not an action under 35 U.S.C. 132, and this ONE MONTH time limit is not extendable.
- ☒ **AMENDMENT AFTER NON-FINAL ACTION:** Since the above-mentioned reply appears to be a *bona fide* response, applicant is given a TIME PERIOD of ONE MONTH from the mailing of this notice within which to re-submit an amendment which complies with either the voluntary practice guidelines or current 37 CFR 1.121 in order to avoid abandonment. EXTENSIONS OF THIS TIME PERIOD ARE AVAILABLE UNDER 37 CFR 1.136(a).

Supervisory Legal Instruments Examiner (SLIE)

¹ For further explanation of the guidelines of the revised amendment format, please see the posted notice and sample amendment format at:
<http://www.uspto.gov/web/offices/pac/dapp/opla/preognotice/officeflyer.pdf> and
<http://www.uspto.gov/web/offices/pac/dapp/opla/preognotice/formatrevamdtprc.pdf>

March 18, 2003